IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ROWANA K. RIGGS,	)	
Plaintiff,	)	**CIVIL ACTION**
v.	)	**No. 03-2546-CM**
AETNA, et al.,	)	
Defendants.	)	

MEMORANDUM AND ORDER

On September 29, 2003, plaintiff filed a complaint that appears to assert claims under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, and claims for breach of contract and tortious interference with contract.[1] This matter is before the court on Defendant American Heritage's Motion to Dismiss and, in the Alternative, Motion for More Definite Statement and Memorandum in Support (Doc. 11), Motion to Dismiss by Defendant The Boeing Military Aircraft Company (Doc. 12), Motion to Dismiss of Defendant Aetna Life Insurance Company (Doc. 14), Plaintiff Motion for Judgment on the Pleading and Request for the Honorable Administrative Judge to be the Hearing Judge in this Case or Judge Carlos Murquia (Doc. 24), Motion for Default Judgement Against

[1] Plaintiff did not comply with Federal Rules of Civil Procedure 8 and 10 when drafting her complaint. The complaint consists of photocopied headnotes from legal databases or excerpts from cases, and it does not contain ***any*** factual assertions. Therefore, in construing plaintiff's complaint so as to do substantial justice, the court has attempted to list every possible legal theory to which plaintiff has alluded. *See* Fed. R. Civ. P. 8(f).

'CUNA' Defendant (Doc. 25), Motion to Dismiss and For Sanctions (Doc. 39), and American Heritage's Joinder in Boeing Credit Union's Motion for Rule 11 Sanctions (Doc. 41).

I. Legal Standards

The court will dismiss a cause of action for failure to state a claim only when it appears beyond a doubt that the plaintiff can prove no set of facts in support of the theory of recovery that would entitle him or her to relief, *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Maher v. Durango Metals, Inc.*, 144 F.3d 1302, 1304 (10th Cir. 1998), or when an issue of law is dispositive. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). The court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, *Maher*, 144 F.3d at 1304, and all reasonable inferences from those facts are viewed in favor of the plaintiff. *Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir. 1984). The issue in resolving a motion such as this is not whether the plaintiff will ultimately prevail, but whether he or she is entitled to offer evidence to support the claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds, Davis v. Scherer*, 468 U.S. 183 (1984).

The court recognizes that plaintiff appears pro se, and the court therefore construes plaintiff's complaint liberally and judges it against a less stringent standard than that used for pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). As the Tenth Circuit has concluded:

> We believe that this rule means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements. At the same time, we do not believe it is the proper function of the district court to assume the role of advocate for the pro se litigant.

Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991) (footnote omitted).

II. Analysis

A. Defendant American Heritage's Motion to Dismiss

In response to plaintiff's complaint, defendant American Heritage Life Insurance Company ("AHL") has filed its motion to dismiss rather than an answer. Plaintiff's response to AHL's motion is styled "Plaintiff Reply to Defendant Answer."

AHL first asserts that plaintiff's cause of action is barred by the doctrine of res judicata because plaintiff already brought suit against AHL for an alleged denial of credit disability insurance benefits. Plaintiff responds by first stating that she files the instant suit against AHL for improper denial of benefits and breach of contract and then quoting case law or database headnotes providing statements of the law of 42 U.S.C. § 1981, ERISA, breach of contract, and tortious interference with contract.

Res judicata, or claim preclusion, prevents a party, upon a final judgment on the merits of an action, from relitigating not only claims that were actually decided, but also ***any claims that could have been decided***, in that action. *Kenmen Eng'g v. City of Union*, 314 F.3d 468, 479 (10th Cir. 2002). Res judicata applies if (1) there is a final judgment on the merits in an earlier action; (2) the parties are identical or in privity; and (3) the suit is based on the same cause of action. *Santana v. City of Tulsa*, 359 F.3d 1241, 1246 n.3 (10th Cir. 2004).

On September 27, 2000, plaintiff filed suit against AHL seeking damages for nonpayment of credit disability insurance benefits under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and Titles I, II, and III of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12111 *et seq*. This court, in the case entitled *Rowana K. Riggs v. American Heritage Life Insurance Company*, Case No. 00-2433-

CM, dismissed plaintiff's claims; a decision which the Tenth Circuit affirmed in *Riggs v. American Heritage Life Insurance Company*, 60 Fed. Appx. 216 (10th Cir. 2003). Thus, a final judgment on the merits has already been entered upon the same parties in this case, and the current suit is based on the same cause of action. Plaintiff is attempting to relitigate the same case against AHL but under different legal theories. Res judicata prevents plaintiff from bringing suit in this action under legal theories that could have been decided in the earlier one. Therefore, the court dismisses plaintiff's claims against AHL as barred by the doctrine of res judicata.

B. Defendant Boeing's Motion to Dismiss

In response to plaintiff's complaint, defendant The Boeing Military Aircraft Company ("Boeing") has also filed its motion to dismiss rather than an answer. Plaintiff's response to AHL's motion is styled "Plaintiff Reply to Defendant Answer."

Plaintiff also appears to assert that Boeing is liable for plaintiff not receiving benefits. Boeing admits that it was plaintiff's former employer but that it is not a proper party defendant. Boeing asserts that the proper entity involving issues regarding Boeing disability and life insurance coverage is the Boeing Company Health & Welfare Benefit Plan, and that the ERISA adminstrator for that Plan is the Boeing Company Employee Benefit Plans Committee. Plaintiff does not contest any of Boeing's factual assertions.

A party bringing an action under ERISA must bring the claim against the plan administrator. *Spires v. Sunflower Elec. Co-op, Inc.*, 280 F. Supp. 2d 1271, 1278 n.4 (D. Kan. 2003). Further, "'common law tort and breach of contract claims are preempted by ERISA if the factual basis of the cause of action involves an employee benefit plan.'" *Lettes v. Kinam Gold Inc.*, 3 Fed. Appx. 783, 786 (10th Cir. 2001) (quoting *Milton v. Scrivner, Inc.*, 53 F.3d 1118, 1121 (10th Cir. 1995)).

Boeing is not the plan administrator for the plan that is the subject of plaintiff's complaint. Consequently, Boeing is not a proper defendant to plaintiff's ERISA claims. Also, because plaintiff's tort and breach of contract claims share the same factual basis with her ERISA claims, these state-law claims are preempted by ERISA. Consequently, the court grants Boeing's motion and dismisses plaintiff's claims against Boeing.

C. Defendant Aetna's Motion to Dismiss

In response to plaintiff's complaint, defendant Aetna Life Insurance Company ("Aetna") has filed its motion to dismiss rather than an answer. Plaintiff's response to Aetna's motion is styled "Plaintiff Reply to Defendant Answer."

As above, Aetna is not the plan administrator of the plan that is the subject matter of plaintiff's ERISA claim. Therefore, Aetna is not the proper defendant to plaintiff's ERISA claims, and, as above, plaintiff's state-law tort and breach of contract claims are preempted. Consequently, the court dismisses plaintiff's claims against Aetna.

D. Plaintiff's Motion for Default Judgment Against CUNA

Plaintiff requests that the court award plaintiff a default judgment against defendant CUNA Mutual Insurance Society ("CUNA") because CUNA did not file an answer to plaintiff's complaint within the 20-day time period set forth in the summons, as provided by Federal Rule of Civil Procedure 12(a)(1)(A).

A party seeking a default judgment must first seek an entry of default from the clerk of the court upon the opposing party's failure to plead or defend an action. Fed. R. Civ. P. 55(a). Thereafter, if the party has entered an appearance, as is the case here, the party seeking a judgment of default must apply to the court for such an award. Fed. R. Civ. P. 55(b)(2). Because the court favors resolving cases on the

merits, default judgments are disfavored. *See Gomes v. Williams*, 420 F.2d 1364, 1366 (10th Cir. 1970). Therefore, "[f]or good cause shown," the court may set aside an entry of default or default judgment. Fed. R. Civ. P. 55(c). Nevertheless, "this judicial preference is counterbalanced by considerations of social goals, justice, and expediency" in adjudicating cases. *Id*. CUNA received plaintiff's complaint by certified mail on December 4, 2003, and the summons directed CUNA to answer within 20 days. Due to the fault of CUNA, it stamped the complaint with the date of December 8, 2003, before sending the documents to its counsel. On December 29, the last day on which CUNA believed it could file, CUNA filed a motion to extend time to plead. Thus, CUNA was 5 days late in responding to plaintiff's answer. Plaintiff did not oppose the motion for extension of time, which the court granted. On January 13, 2004, CUNA filed its answer to plaintiff's complaint.

The court concludes that neither an entry of default nor default judgment is appropriate. CUNA has not failed to respond to plaintiff's complaint; rather, CUNA was 5 days late in responding. While CUNA was at fault for missing the deadline, the court reiterates that default judgments are disfavored, particularly in this case where CUNA did respond to plaintiff's complaint. The court, therefore, exercises its discretion to decide plaintiff's case against CUNA on the merits, rather than based on a deadline missed by 5 days, and denies plaintiff's motion for default judgment against CUNA.

E. Boeing Wichita Credit Union's Motion to Dismiss and for Sanctions

Defendant Boeing Wichita Credit Union (BWCU) has filed a motion to dismiss[2] and for sanctions. Plaintiff has not responded to the motion. BWCU makes several factual assertions that the court finds

[2] Generally, a motion to dismiss must be filed before a response pleading is due. Fed. R. Civ. P. 12(b). In this case, BWCU filed an answer, making its present motion one for judgment on the pleadings pursuant to Rule 12(c), which can be made at any time after the pleadings are closed.

relevant to BWCU's motion. Plaintiff financed the purchase of two vehicles through BWCU and, as part of that transaction, purchased credit disability insurance. Plaintiff was in default on her loans through BWCU, prompting BWCU to file a state court action to repossess the two vehicles. In response, plaintiff filed suit against BWCU and then filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Kansas. Trustee to plaintiff's bankruptcy estate filed notice of intended sale/assignment of plaintiff's claims against BWCU, which BWCU purchased for $1,500.00. Subsequently, the Bankruptcy Court ordered plaintiff to pay sanctions in the amount of $9,450.00 to BWCU for plaintiff's repeated failures to appear at hearings in front of the Court.

BWCU seeks dismissal of plaintiff's claims on the theory that plaintiff is not the real party in interest, pursuant to Federal Rule of Civil Procedure 17.

Because plaintiff filed a bankruptcy proceeding after filing her state-court claims, her interests or claims to property become the property of the bankruptcy estate. *See* 11 U.S.C. § 541(a). Therefore, because the claims are the property of the bankruptcy estate, the trustee is the real party in interest with standing to pursue them. *Wieburg v. GTE S.W. Inc.*, 272 F.3d 302, 306 (5th Cir. 2001). Further, in plaintiff's bankruptcy proceedings, the trustee sold plaintiff's claims against BWCU to BWCU for $1,500.00. Although difficult to discern from plaintiff's complaint, the court finds that plaintiff is attempting to reassert her state-court claims against BWCU. Consequently, the court concludes that plaintiff is no longer the real party in interest and has no standing to pursue those claims.

BWCU also requests that the court impose sanctions on plantiff under Federal Rule of Civil Procedure 11.

A motion for sanctions must be made separately from other motions and comply with the twenty-one-day safe-harbor requirement. *See* Fed. R. Civ. P. 12(c)(1)(A). It appears to the court that BWCU complied with the required safe-harbor requirement by sending plaintiff a letter informing her that it would seek sanctions if she did not withdraw her lawsuit against BWCU. BWCU, however, included its request for sanctions in its motion to dismiss. While the court would be inclined to grant BWCU's motion for sanctions, the Tenth Circuit has made clear that such an award would be an abuse of the court's discretion when the party does not comply with the separate-motion requirement. *See Karara v. Czopek*, No. 95-1361, 1996 WL 330260, at *2 (10th Cir. 1996) (reversing the district court's award of Rule 11 sanctions because the moving party did not comply with the separate motion and twenty-one-day safe-harbor requirements). The court therefore denies BWCU's motion for sanctions.

F. AHL's Motion for Sanctions

AHL files a motion in which it states that it joins in BWCU's motion for sanctions. AHL has not complied with the safe-harbor requirement of Rule 11; thus, the court denies its motion for sanctions.

G. Plaintiff's Motion for Judgment on the Pleadings

Plaintiff's motion for judgment on the pleadings is, like her complaint and pleadings, merely a series of photocopied database headnotes or excerpts from cases and contains no factual assertions or arguments in support of her motion. Further, the court has granted, above, defendants' motions to dismiss. Consequently, the court denies plaintiff's motion.

IT IS THEREFORE ORDERED that Defendant American Heritage's Motion to Dismiss and, in the Alternative, Motion for More Definite Statement and Memorandum in Support (Doc. 11), Motion to

Dismiss by Defendant The Boeing Military Aircraft Company (Doc. 12), Motion to Dismiss of Defendant Aetna Life Insurance Company (Doc. 14) are granted.

IT IS FURTHER ORDERED that Motion to Dismiss and For Sanctions (Doc. 39) is granted in part and denied in part. The court grants the motion to dismiss but denies the motion for sanctions.

IT IS FURTHER ORDERED that Plaintiff Motion for Judgment on the Pleading and Request for the Honorable Administrative Judge to be the Hearing Judge in this Case or Judge Carlos Murquia (Doc. 24), Motion for Default Judgement Against 'CUNA' Defendant (Doc. 25), and American Heritage's Joinder in Boeing Credit Union's Motion for Rule 11 Sanctions (Doc. 41) are denied.

Dated this 7th day of June 2004, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge